

November 4, 2004

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Stephen A. Vaughn

Date of Filing: September 16, 2004

Case Number: TFA-0070

On September 16, 2004, Stephen A. Vaughn filed an Appeal from a determination issued to him by the Director of the Department of Energy's (DOE) FOIA/Privacy Act Group (hereinafter referred to as "the Director") in response to a request for documents that Mr. Vaughn submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require that the Director perform an additional search for responsive material.

I. Background

In his FOIA request, Mr. Vaughn sought access to any documents concerning the employment of his father, James Vaughn, with the Atomic Energy Commission (AEC) or any AEC contractor between 1944 and 1964, including any documents generated pursuant to investigations pertaining to his security clearance. In his response, the Director informed Mr. Vaughn that his request had been referred to the DOE's Office of Security, Office of Personnel Security, and that a search of that Office had failed to locate any responsive documents. In his Appeal, Mr. Vaughn challenges the adequacy of the search that was conducted.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); accord *Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Glen Milner*, 17 DOE ¶ 80,102 (1988).

In order to determine whether the search was adequate, we contacted the Director's Office and the Office of Personnel Security. We were informed that the Office of Personnel Security maintained

records on microfiche of former holders of DOE clearances and those of predecessor agencies such as the AEC. These records were searched and no responsive information was found. We were further informed that according to DOE record retention procedures, records in James Vaughn's Personnel Security File would have been destroyed after 10 years.¹ Since James Vaughn's clearance was most likely terminated in 1964 along with his employment with the AEC or an AEC contractor, it is therefore very likely that any records pertaining to that clearance have been destroyed.²

However, during our consultations with the two Offices, it became evident that documents concerning the senior Vaughn's employment might be located in two additional places. As a result, the Director's Office requested that the DOE's Office of Personnel and Office of Worker Transition and Safety search for responsive documents. The Office of Personnel reported that no responsive documents could be found.³ The Office of Worker Transition and Safety replied that it could not reasonably conduct a search based on the limited information provided by Stephen Vaughn. Specifically, that Office stated that some information regarding his father's place of employment or the identity of his employer was needed. The DOE regulations implementing the FOIA require that requests must be "for reasonably described records," and must provide information that "enable[s] DOE personnel to locate them with a reasonable amount of effort." 10 C.F.R. § 1004.4(b). We believe that the Office of Worker Transition and Safety acted within its discretion in refusing to conduct a search based upon the incomplete information provided by Stephen Vaughn.⁴ We also

-
- 1/ See memorandum of October 14, 2004 telephone conversation between Robert B. Palmer, OHA Staff Attorney, and Audrey Dixon, Office of Personnel Security.
 - 2/ In his Appeal, Mr. Vaughn requested that he be informed of the existence of any documents pertaining to the destruction of his father's records. We were informed by Ms. Dixon that records of documents destroyed under the DOE's record retention policies are maintained, but that such records only pertain to documents destroyed after 1988.
 - 3/ The Office of Personnel informed the Director's Office that one year after an employee has left federal service, his personnel file is transferred to the Federal Records Center in St. Louis, Missouri, a facility of the National Archives and Records Administration, an independent federal agency. Therefore, if James Vaughn was a federal employee, there is a possibility that records of his employment would be located there. The Center is located at 111 Winnebago Street, St. Louis, MO 63118. They may be contacted by telephone at (314) 801-9257 or by e-mail (cpr.center@nara.gov).
 - 4/ Sheila Dillard of that Office has informed us, however, that she would be happy to arrange for a search for the requested documents if provided with any available additional information about the location of James Vaughn's work site or the identity of his employer(s). Ms. Dillard may be reached at telephone number (202) 586-1311.

conclude that the search performed in response to Mr. Vaughn's request, augmented as described herein, was adequate, and that his Appeal should be denied.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Stephen A. Vaughn on September 16, 2004, OHA Case Number TFA-0070, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: November 4, 2004

